

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID HOWELL,

Plaintiff

Vs.

COMPLAINT

PETER T ROACH & ASSOCIATES PC

Defendant

Albany County }

New York State } ss:

DAVID HOWELL, the Plaintiff in this action, complains of the defendant by alleging and showing that:

NATURE OF ACTION

1. This is an action to enforce the Fair Debt Collection Practice Act (FDCPA) 15 USC sc 1692 *et seq.*

JURIDICTION AND VENUE

2. This Court has federal question jurisdiction under 15 USC §1692k (d) and 28 USC §1331. Declaratory relief is available per 28 USC §§ 2201 and 2202
3. Venue is proper in this district per 28 USC §1391 (b), as the acts and transactions that give rise to this action occurred, in substantial part, in

this district. Venue is also proper in this district because plaintiff lives in this district, defendant conducts business in this district and the injury occurred in this district.

PARTIES

4. At all relevant times:
 - a. I am and was a resident of the City of Albany, Albany County, New York State, within this district,
 - b. I am a " consumer" as that term is defined in the FDCPA, in that the alleged debt is a personal debt.
5. Upon information and belief, at all relevant time, the defendant Peter T Roach & Associates PC ("Roach") :
 - a. is a New York professional corporation with a principal place of business at 115 Eileen Way Syosset NY
 - b. Is a "debt collector" as that term is defined in the FDCPA;
 - c. Is in the business of collecting consumer debt for others by use of the mail, telephone, and the courts of New York and other means of interstate commerce.

FACTUAL ALLEGATIONS

6. On 4/14/08 Roach sued me on behalf of Citibank (South Dakota) NA
7. The subject of the lawsuit was an alleged credit card debt, being an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, or services are primarily for personal, family, or household purposes, hence a "debt" as that term is defined by the FDCPA
8. Prior to that time, I had asked Citibank and Roach not to contact me, a request Roach expressly promised to honor. ¹
9. My attorney answered the complaint in June 2008 and has represented me in the lawsuit at all times since that time.²
10. On or about 12/9/08, Roach sent me a copy of a motion for summary judgment he was bringing. Attached to the motion papers was a letter that read, in pertinent part:

"Dear Mr. Howell,

As you are aware, this firm represents Citibank (South Dakota) NA in the above referenced action. This letter served to advise you that Plaintiff's Motion for Summary Judgment on the above case is returnable on January 5, 2009 at 9:30 am.

¹ See Ex A

² See Ex B

We have requested that Plaintiff's Motion for Summary Judgment be heard on submission. Should you wish to discuss settlement of the motion, please contact this office at the above reference telephone number, extension 125.

Very truly yours,

s/ Peter T Roach

cc: Albany Supreme Court
Columbia & Eagle Streets
Albany NY 12207 " ³

11. Defendant did not send this letter to my attorney. Defendant did not ask my attorney if it could contact me directly.
12. At all times before 12/9/08:
 - a. I did not revoke my request to Roach not to contact me nor did I consent to their direct communication with me,
 - b. No court of competent jurisdiction gave Roach express permission to communicate with me.

³ See Ex C

13. At all times on or before 12/9/08:
 - a. Roach knew I was represented by an attorney in respect to the subject debt and knew his name and address;
 - b. My attorney did not give his consent to Roach's direct communication with me;
 - c. My attorney did not fail to respond within a reasonable period of time to any communication from Roach which would have precipitated the 12/9/08 letter.

AS A FIRST CAUSE OF ACTION

(Violation of the Fair Debt Collection Practices Act)

14. I repeat the allegations of the preceding paragraphs
15. Roach's 12/9/08 letter to me:
 - a. violates 15 USC 1692c(c) by communicating with me after being told not to;
 - b. Violates 15 USC 1692a (a)(2) by communicating with me when Roach knew I was represented by counsel in the lawsuit.

AS A SECOND CAUSE OF ACTION

(Violation of the Fair Debt Collection Practices Act)

16. I repeat the allegations of the preceding paragraphs.
17. Roach's actions of sending the 12/9/08 letter directed only at me and shared only with the court:
 - a. Is unfair per 15 USC 1692f as it seeks to pit me against my lawyer, seeks to have me deal with Roach directly rather than through my lawyer, and seeks to cast me in an unfavorable light with the Court.
 - b. Seeks to harass, humiliate me and bully me into paying a debt I do not owe, in violation of 15 USC 1692d
 - c. Violates 15 USC 1692e(11) in that the letter fails to say that the debt collector is attempting to collect a debt.
18. Upon information and belief Roach's actions were frequent, intentional, and persistent.
19. As a result I have been damaged.

DEMAND FOR JURY TRIAL

I ask for a jury trial of all issues.

WHEREFORE, I ask the Court for judgment:

- a. declaring the actions of Roach in violation of the FDCPA ;
- b. awarding me actual damages;
- c. awarding me statutory damages per 15 USC §1692k;
- d. awarding me costs and disbursements of this action, and reasonable attorney's fees (per 15 USC 1692k), and
- e. such other, further and different relief as the Court finds proper here.

DATED: 5/27/09

s/ Anthony J Pietrafesa

ANTHONY J PIETRAFESA ESQ. (102368)

Attorney for the Plaintiff
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VERIFICATION

New York State }
Albany County } ss:

David Howell, being duly sworn, deposes and says: I the plaintiff in this action, I have read the complaint, and the factual allegations contained in the complaint are true to my personal knowledge except for those based on my information and belief, and as to those I believe them to be true.

_____*s/ David Howell*_____

Sworn to and Subscribed
Before me on 5/27/09

s/ Anthony J Pietrafesa
Anthony J. Pietrafesa
Notary Public Albany County
02PI6155974
My Commission exp. 11/20/2010

